



**STATE OF TENNESSEE  
CENTRAL PROCUREMENT OFFICE  
REQUEST FOR QUALIFICATIONS  
FOR  
MEDICAID ELECTRONIC HEALTH RECORDS (EHR)  
INCENTIVE PAYMENT PROGRAM  
AUDIT SERVICES**

**RFQ # 31865-00602**

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## **1. INTRODUCTION**

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The State of Tennessee, Central Procurement Office, hereinafter referred to as “the State,” issues this Request for Qualifications (“RFQ”) to define mandatory goods or services requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses.

Through this RFQ or any subsequent solicitation, the State seeks to buy the requested goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises, the opportunity to do business with the state as contractors or subcontractors.

### **1.1. Statement of Procurement Purpose**

The State of Tennessee Central Procurement Office (“CPO”), an agency of the State of Tennessee, hereinafter referred to as “the State,” has issued this Request for Qualifications (“RFQ”) to define the State’s minimum service requirements, solicit responses, detail response requirements, and, outline the State’s process for evaluating responses and selecting a contractor to provide audit services to the State of Tennessee Division of TennCare (“TennCare”) for TennCare’s Medicaid Electronic Health Records (EHR) Incentive Payment Program, established under 42 C.F.R. § 495.

The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA), was signed into law to promote the adoption and meaningful use of health information technology. The Medicaid Electronic Health Records (EHR) Incentive Payment Program, established pursuant to 42 CFR § 495, provides incentive payments to eligible professionals (EPs) and eligible hospitals (EHs) for adopting, implementing, and upgrading certified electronic health record technology (CEHRT) and for the subsequent meaningful use of CEHRT. The Division of TennCare administers the Medicaid EHR Incentive Payment Program for the state of Tennessee. As required by federal law, TennCare must establish a process to monitor these incentive payments to verify the EPs and EHs receiving these funds:

- Meet all federally-established program eligibility criteria, and
- Are meaningfully using their CEHRT system.

The vendor will test the accuracy of attestation information reported by EPs and EHs via the state’s attestation application, the Provider Incentive Payment Program (PIPP). Per the Centers for Medicare & Medicaid Services (CMS), the EHR Incentive Program is scheduled to end in 2021, and corresponding audit activity must be concluded by 2022. The purpose of the RFQ is to select a vendor that is technically qualified to handle the backlog of EHR audits in addition to completing remaining EHR audits until the program concludes.

### **1.2. Pre-Response Conference**

A Pre-Response Conference will be held at the time and date detailed in the RFQ Schedule of Events, RFQ § 2. Pre-Response Conference attendance is not mandatory, and potential Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations. Please contact the Solicitation Coordinator to RSVP for the Pre-Response Conference. The Conference will be held at:

Division of TennCare  
TennCare Building  
310 Great Circle Road  
Nashville, TN 37243

### **1.3. Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in RFQ § 2, Schedule of Events, potential Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond

in the form of a simple e-mail or other written communication. Such notice should include the following information: the business or individual's name (as appropriate), a contact person's name and title, the contact person's mailing address, telephone number, facsimile, number, and e-mail address. Filing a Notice of Intent to Respond is not a prerequisite for submitting a response; however, it is necessary to ensure receipt of notices and communications relating to this RFQ.

**1.4. Definitions and Abbreviations**

TERM	DEFINITION
N/A	N/A

**2. RFQ SCHEDULE OF EVENTS**

The following schedule represents the State's best estimates for this RFQ; however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or cancel and reissue a similar solicitation. Nothing in this RFQ is intended by the State to create any property rights or expectations of a property right in any Respondent.

EVENT		TIME (Central Time Zone)	DATE (all dates are State business days)
1.	RFQ Issued		February 22, 2019
2.	Disability Accommodation Request Deadline	2:00 p.m.	February 27, 2019
3.	Pre-Response Conference	2:00 p.m.	March 1, 2019
4.	Notice of Intent to Respond Deadline	2:00 p.m.	March 4, 2019
5.	Written "Questions & Comments" Deadline	2:00 p.m.	March 15, 2019
6.	State response to written "Questions & Comments"		March 29, 2019
7.	RFQ Technical Response Deadline	2:00 p.m.	April 9, 2019
8.	State Completion of Technical Response Evaluations		April 18, 2019
9.	State Notice of Qualified Respondent(s) Released		April 19, 2019
10.	State Notice of Intent to Award Released and RFQ Files Opened for Public Inspection		April 22, 2019
11.	End of Open File Period		April 29, 2019
12.	State sends contract to Contractor for signature		May 1, 2019
13.	Contractor Signature Deadline		May 8, 2019
14.	Contract Start Date		July 01, 2019

**3. RESPONSE REQUIREMENTS**

**3.1. Response Contents:** A response to this RFQ should address the following:

**3.1.1. Mandatory Requirements:** This section details the mandatory technical, functional, and experience requirements that must be demonstrated in the response to this RFQ in order

to be passed on to Phase II of the Technical Response evaluation. A Respondent must duplicate and use RFQ Attachment A as a guide to organize responses for the Mandatory Requirements of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table. This section is included in the State's evaluation as to whether or not a Respondent meets mandatory qualifications (Phase I).

- 3.1.2. General Qualifications & Experience: This section is included in the State's evaluation of Phase II of the Technical Response Evaluation and details general information and qualifications that must be demonstrated in the response to this RFQ. A Respondent must duplicate and use RFQ Attachment B as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table.
- 3.1.3. Technical Qualifications, Experience & Approach: This section is also included in the State's evaluation of Phase II of the Technical Response Evaluation and details technical qualifications, experience, and approach items that must be demonstrated in the response to this RFQ. A Respondent must duplicate and use RFQ Attachment C as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table.
- 3.1.4. Cost Proposal: ***For Qualified Respondent only***
  - 3.1.4.1. This section only applies to those respondents identified as being Qualified. See RFQ § 2, Schedule of Events, "State Notice of Qualified Respondents Released."
  - 3.1.4.2. If included as part of this solicitation, then the Cost Proposal must be recorded on an exact duplicate of RFQ Attachment E, Cost Proposal & Evaluation Guide. Any response that does not follow the instructions included in RFQ Attachment E may be deemed nonresponsive.
  - 3.1.4.3. A Respondent must only record the proposed cost exactly as required by the RFQ Attachment E, Cost Proposal & Evaluation Guide and must NOT record any other rates, amounts, or information.
  - 3.1.4.4. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period.
  - 3.1.4.5. A Respondent must sign and date the Cost Proposal.
  - 3.1.4.6. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response.

### 3.2. **Response Delivery Location**

A Respondent must ensure that the State receives a Response to this RFQ no later than the Response Deadline time and dates detailed in the RFQ § 2, Schedule of Events. All responses must be delivered to:

Maria Paredes, Sourcing Analyst  
Central Procurement Office  
Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
629-888-5894  
[Maria.Paredes@tn.gov](mailto:Maria.Paredes@tn.gov)

### 3.3. **Response Format**

- 3.3.1. A Respondent must ensure that the original response meets all form and content requirements detailed within this RFQ.
- 3.3.2. A Respondent must submit original response documents and copies as specified below.
  - 3.3.2.1. Technical Response

One (1) original Technical Response paper document clearly labeled:

**“RFQ #31865-00602 TECHNICAL RESPONSE ORIGINAL”**

and five (5) copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

**“RFQ #31865-00602 TECHNICAL RESPONSE COPY”**

The digital copies should not include copies of sealed customer references or cost information in the general and technical evaluation phase. However, any other discrepancy between the paper response document and digital copies may result in the State rejecting the response as nonresponsive.

**3.3.2.2. Cost Proposal:**

One (1) original Cost Proposal paper document labeled:

**“RFQ #31865-00602 COST PROPOSAL ORIGINAL”**

and one (1) copy in the form of a digital document in “XLS” format properly recorded on a separate, blank, standard CD-R recordable disc or USB flash-drive labeled:

**“RFQ #31865-00602 COST PROPOSAL COPY”**

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

**3.4. Response Prohibitions:** A response to this RFQ shall not:

- 3.4.1. Restrict the rights of the State or otherwise qualify the response to this RFQ;
- 3.4.2. Include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Respondent knew or should have known was materially incorrect;
- 3.4.3. Include more than one response, per Respondent, to this RFQ;
- 3.4.4. Include any information concerning costs (in specific dollars or numbers) associated with the Technical Response;
- 3.4.5. Include the respondent's own contract terms and conditions (unless specifically requested by the RFQ); or
- 3.4.6. Include the respondent as a prime contractor while also permitting one or more other respondents to offer the respondent as a subcontractor in their own responses.
- 3.4.7. Exceed 80 pages in length per technical response section C of the RFQ (maps, graphs, and charts included as an appendix will not count against this page limit)

**3.5. Response Errors & Revisions**

A Respondent is responsible for any and all errors or omissions in its response to this RFQ. A Respondent will not be allowed to alter or revise its response after the Response Deadline time and dates as detailed in RFQ § 2, Schedule of Events, unless such is formally requested in writing by the State (e.g., through a request for clarification, etc.).

**3.6. Response Withdrawal**

A Respondent may withdraw a response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events, by submitting a written signed request by an authorized representative of the Respondent. After withdrawing a response, a Respondent may

submit another Response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events.

### 3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response. Each Respondent is solely responsible for the costs it incurs in responding to this RFQ.

## 4. **GENERAL INFORMATION & REQUIREMENTS**

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### 4.1. **Communications**

- 4.1.1. Respondents shall reference RFQ #31865-00602 in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator:

Maria Paredes, Sourcing Analyst  
Central Procurement Office  
Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
629-888-5894  
[Maria.Paredes@tn.gov](mailto:Maria.Paredes@tn.gov)

The State will convey all official responses and communications related to this RFQ to the potential respondents from whom the State has received a Notice of Intent to Respond (refer to RFQ Section 1.3.).

- 4.1.2. Potential respondents with a handicap or disability may receive accommodation relating to the communication of this RFQ and participating in the RFQ process. Potential respondents may contact the RFQ Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in RFQ § 2, Schedule of Events.
- 4.1.3. **Unauthorized contact about this RFQ with other employees or officials of the State of Tennessee may result in disqualification from contract award consideration.**
- 4.1.4. Notwithstanding the foregoing, potential Respondents may also contact the following as appropriate:
- 4.1.4.1. Staff of the Governor's Office of Diversity Business Enterprise may be contacted for assistance with respect to available minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities and small business enterprises as well as general public information relating to this request; or
- 4.1.4.2. The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Maria Paredes, Sourcing Analyst  
Central Procurement Office  
Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
629-888-5894  
[Maria.Paredes@tn.gov](mailto:Maria.Paredes@tn.gov)

### 4.2. **Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed,

color, religion (subject to Tenn. Code Ann. §§ 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

**4.3. Conflict of Interest**

4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,

4.3.1.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

4.3.1.2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

4.3.1.3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

4.3.2. This RFQ is also subject to Tenn. Code Ann. § 12-4-101.

**4.4. Respondent Required Review & Waiver of Objections**

4.4.1. Each potential respondent must carefully review this RFQ, including but not limited to, attachments, the RFQ Attachment F, *pro forma* Contract, and any amendments for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").

4.4.2. Any potential respondent having questions and comments concerning this RFQ must provide such in writing to the State no later than the written "Questions & Comments Deadline" detailed in RFQ § 2, Schedule of Events.

4.4.3. Protests based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the written "Questions & Comments Deadline."

**4.5. Disclosure of Response Contents**

4.5.1. All materials submitted to the State in response to this solicitation become property of the State of Tennessee. Selection for award does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this request will become open to public inspection in accordance with the laws of the State of Tennessee. Refer to RFQ § 2, Schedule of Events.

4.5.2. The RFQ responses will be available for public inspection only after the completion of evaluation of the RFQ or any resulting solicitation which this RFQ becomes a part of, whichever is later.

**4.6. Notice of Professional Licensure, Insurance, and Department of Revenue Registration Requirements**

4.6.1. All persons, agencies, firms or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as part of a response to this RFQ, shall be properly licensed to render such opinions.

4.6.2. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.

4.6.3. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must provide a valid, Certificate of Insurance indicating current insurance coverage meeting minimum requirements as may be specified by the RFQ.

- 4.6.4. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Respondent provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.

#### **4.7. RFQ Amendments & Cancellation**

- 4.7.1. The State reserves the right to amend this RFQ at any time, provided that it is amended in writing. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential respondents to meet the deadlines and revise the RFQ Schedule of Events if deemed appropriate. If a RFQ amendment is issued, the State will convey it to potential respondents who submitted a Notice of Intent to Respond (refer to RFQ § 1.3). A response must address the final RFQ (including its attachments) as may be amended.
- 4.7.2. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFQ in accordance with applicable laws and regulations.

#### **4.8. State Right of Rejection**

- 4.8.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.
- 4.8.2. The State may deem as nonresponsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the State reserves the right to seek clarifications or to waive, at its sole discretion, a response's minor variances from full compliance with this RFQ. If the State waives variances in a response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance with such, and the State may hold any resulting vendor to strict compliance with this RFQ.
- 4.8.3. The State will review the response evaluation record and any other available information pertinent to whether or not each respondent is responsive and responsible. If the evaluation team identifies any respondent that appears not to meet the responsive and responsible thresholds such that the team would not recommend the respondent for potential contract award, this determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

#### **4.9. Assignment & Subcontracting**

- 4.9.1. The vendor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.9.2. If a Respondent intends to use subcontractors, the response to this RFQ must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFQ Attachment B, Item B.14.).
- 4.9.3. Subcontractors identified within a response to this RFQ will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.
- 4.9.4. The Contractor resulting from this RFQ may only substitute another subcontractor for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.
- 4.9.5. Notwithstanding any State approval relating to subcontracts, the Contractor resulting from this RFQ will be the prime contractor and will be responsible for all work under the Contract.

#### **4.10. Next Ranked Respondent**



The State reserves the right to initiate negotiations with the next ranked respondent should the State cease doing business with any respondent selected via this RFQ process.

## 5. **PROCUREMENT PROCESS & CONTRACT AWARD**

5.1. The complete vendor selection will be a two-part process: (1) Qualification of Technical Responses for initial ranking; and (2) Evaluation of General and Technical Qualifications to select the successful bidder. Any contract award is subject to successful contract negotiation.

5.2. Qualification of Technical Responses: Technical Responses will be short-listed for further evaluation, analysis or negotiation if they are apparently responsive, responsible, and within the competitive range. A Technical Response will be deemed within the competitive range based on the following criterion:

5.2.1. The Technical Response must be ranked in the top 3 after the Technical Response score is totaled and put in ordinal ranking (1 - the best evaluated ranking).

Phase I: The State will evaluate the Mandatory Requirements set forth in RFQ Attachment A on a pass/fail basis.

Phase II: Following the Phase I evaluation, the State will apply a standard equitable evaluation model, which will represent a qualitative assessment of each response. Each response will be scored by Evaluation Team members according to the Technical Response & Evaluation Guides (See RFQ Attachments B & C).

The Solicitation Coordinator will total the average score from the evaluation team for each responsive and responsible Respondent's Technical Response Points for RFQ Attachments B & C to determine which of the Respondents are considered Qualified and within the competitive range.

5.3. Cost Proposals: If cost is included as an evaluation category in this solicitation then only Qualified Respondents, that are responsive and responsible and in the competitive range, will continue onto Part Two, evaluation of general and technical qualifications to selected, successful bidder. . See RFQ Attachment E, Cost Proposal & Evaluation Guide.

5.4. Clarifications and Negotiations: The State reserves the right to award a contract on the basis of initial responses received; therefore, each response should contain the respondent's best terms from a technical and cost standpoint. However, the State reserves the right to conduct clarifications or negotiations with respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.

5.4.1. Clarifications: The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification round(s). Each clarification sought by the State may be unique to an individual respondent.

5.4.2. Negotiations: The State may elect to negotiate with Qualified Respondents, within the competitive range, by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds.

5.4.2.1. Cost Negotiations: All responsive respondents within the competitive range will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current

pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual respondent pricing. During target price negotiations, respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices.

- 5.4.2.2. If the State determines costs and contract finalization discussions and negotiations are not productive, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.

## 5.5. Evaluation Guide

The State will consider qualifications, experience, technical approach, and cost (if applicable) in the evaluation of responses and award points in each of the categories detailed below. The maximum evaluation points possible for each category are detailed below.

Evaluation Category	Maximum Points Possible
Mandatory Requirements (refer to RFQ Attachment A)	Pass/Fail
General Qualifications, Experience, Technical Qualifications, Experience & Approach (refer to RFQ Attachment B)	30
Technical Qualifications, Experience & Approach (refer to RFQ Attachment C)	70

## 5.6. Contract Award

- 5.6.1. The Solicitation Coordinator will submit the Evaluation Team determinations and response scores to the head of the contracting agency, or the agency head's designee, for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.6.2. The contracting agency head, or the agency head's designee, will determine the apparent best-evaluated response. (To effect a contract award to a Respondent other than the one receiving the highest evaluation score, the head of the contracting agency must provide written justification and obtain written approval of the Chief Procurement Officer and the Comptroller of the Treasury.)
- 5.6.3. The State reserves the right to make an award without further discussion of any response.
- 5.6.4. The State will issue an Evaluation Notice and make the RFQ files available for public inspection at the time and date specified in the RFQ §2, Schedule of Events.
- 5.6.5. The Respondent identified as offering the apparent best-evaluated must sign a contract drawn by the State pursuant to this RFQ. The contract shall be substantially the same as the RFQ Attachment F, pro forma contract. The Respondent must sign said contract no later than the Respondent Contract Signature Deadline detailed in RFQ § 2, Schedule of Events. If the Respondent fails to provide the signed contract by the deadline, the State may determine the Respondent is non-responsive to this RFQ and reject the response.
- 5.6.6. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the pro forma contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluation or negatively impact the competitive nature of the RFQ and contractor selection process.

- 5.6.7. If the State determines that a response is nonresponsive and rejects it, the Solicitation Coordinator will re-calculate scores to determine (or re-determine) the apparent best-evaluated response.

### TECHNICAL RESPONSE & EVALUATION GUIDE

All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review all responses to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Evaluation Team must review the responses and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFQ requirements.

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		The Technical Response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ § 2, Schedule of Events.	
		The Technical Response must not contain cost or pricing information of any type.	
		The Technical Response must not contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must not submit alternate responses.	
		A Respondent must not submit multiple responses in different forms (as a prime and a subcontractor).	
	<b>A.1.</b>	Provide the Statement of Certifications and Assurances (RFQ Attachment E) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ and any resulting contract. The document must be signed without exception or qualification.	
	<b>A.2.</b>	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	<b>A.3.</b>	The Technical Response for section C must not exceed <u>80</u> pages in length;	
	<b>A.4.</b>	Provide documentation disclosing the amount of cash flows from operating activities for the Respondent's most current operating period. Said documentation must indicate whether the cash flows are positive or	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		<p>negative, and, if the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</p>	
	<b>A.5.</b>	<p>Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following:</p> <ul style="list-style-type: none"> <li>(a) Insurance Company</li> <li>(b) Respondent's Name and Address as the Insured</li> <li>(c) Policy Number</li> <li>(d) The following minimum insurance coverage: <ul style="list-style-type: none"> <li>(i) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or One Million Dollars (\$1,000,000.00) per occurrence for employers' liability;</li> <li>(ii) Comprehensive Commercial General Liability (including personal injury &amp; property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate;</li> <li>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than One Million Dollars (\$1,000,000.00) per occurrence; and</li> <li>(iv) Professional Malpractice Liability with a limit of not less than One Million Dollars (\$1,000,000.00) per claim.</li> </ul> </li> <li>(e) The following information applicable to each type of insurance coverage: <ul style="list-style-type: none"> <li>(i) Coverage Description,</li> <li>(ii) Exceptions and Exclusions,</li> <li>(iii) Policy Effective Date,</li> <li>(iv) Policy Expiration Date, and</li> </ul> </li> <li>(v) Limit(s) of Liability.</li> </ul>	
<p><i>State Use – RFQ Coordinator Signature, Printed Name &amp; Date:</i></p>			

### TECHNICAL RESPONSE & EVALUATION GUIDE

**SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Evaluation Team members will independently evaluate and assign one score for all responses to Section B—General Qualifications & Experience Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	<b>B.2.</b>	Describe the Respondent's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	<b>B.3.</b>	Detail the number of years the Respondent has been in business.
	<b>B.4.</b>	Briefly describe how long the Respondent has been performing the goods or services required by this RFQ.
	<b>B.5.</b>	Describe the Respondent's number of employees, client base, and location of offices.
	<b>B.6.</b>	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	<b>B.7.</b>	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFQ, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	<b>B.8.</b>	Provide a statement of the Respondent's history pertaining to bankruptcy. In the last ten (10) years, has the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary? In the last ten (10) years, has the Respondent undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors? Include an explanation providing relevant details.
	<b>B.9.</b>	<p>Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFQ or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFQ.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.10.</b>	<p>Provide a statement of whether there is any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFQ.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</p>
	<b>B.11.</b>	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFQ (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	<b>B.12.</b>	Provide a narrative description of the proposed contract team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to provide the goods or services required by this RFQ, illustrating the lines of authority, and designating the individual responsible for the completion of each task and deliverable of the RFQ.
	<b>B.13.</b>	Provide a personnel roster listing the names of staff listed in Section A.7 of Attachment F, pro forma contract who the Respondent will assign to perform tasks required by this RFQ along with the estimated number of hours that each individual will devote to the required tasks. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	<b>B.14.</b>	<p>Provide a statement of whether the Respondent intends to use subcontractors to accomplish the work required by this RFQ, and if so, detail:</p> <p>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</p> <p>(b) a description of the scope and portions of the work each subcontractor will perform; <u>and</u></p> <p>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFQ.</p>
	<b>B.15.</b>	<p>Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, businesses owned by persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, businesses owned by persons with disabilities, and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (i.e., ethnicity, gender, service-disabled, disability); and</p> <p>(iii) contractor contact name and telephone number.</p> <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, businesses owned by persons with disabilities, and small business enterprises if a contract is awarded to</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>the Respondent pursuant to this RFQ. Please include the following information:</p> <ul style="list-style-type: none"> <li>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>);</li> <li>(ii) anticipated goods or services contract descriptions;</li> <li>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, disability) of anticipated subcontractors and supply contractors.</li> </ul> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, businesses owned by persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five-year period. If so, provide the following information for all current and completed contracts:</p> <ul style="list-style-type: none"> <li>(a) the name, title, telephone number and e-mail address of the State contact responsible for the contract at issue;</li> <li>(b) the name of the procuring State agency;</li> <li>(c) a brief description of the contract's specification for goods or scope of services;</li> <li>(d) the contract term; and</li> <li>(e) the contract number.</li> </ul> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points.</li> <li>▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts responsive to Section B.16 of this RFQ.</li> </ul>
	B.17.	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFQ and which represent:</p> <ul style="list-style-type: none"> <li>▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u></li> <li>▪ three (3) completed projects.</li> </ul> <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed is provided at RFQ Attachment E. References that are not completed as required may be deemed nonresponsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires, follow the process below:</p>



<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<p>(a) Add the Respondent's name to the standard reference questionnaire at Attachment E, and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and a new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <ul style="list-style-type: none"> <li>(i) complete the reference questionnaire;</li> <li>(ii) sign <u>and</u> date the completed reference questionnaire;</li> <li>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</li> <li>(iv) sign his or her name in ink across the sealed portion of the envelope; and</li> <li>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</li> </ul> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required.</li> <li>▪ The State will not review more than the number of required references indicated above.</li> <li>▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.</li> <li>▪ The State is under <u>no</u> obligation to clarify any reference information.</li> </ul>
	<b>B.18.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent or any of the Respondent's officers, directors, agents, or employees are any of the following:</p> <ul style="list-style-type: none"> <li>(a) presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</li> <li>(b) within the past three (3) years, have been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</li> <li>(c) presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</li> <li>(d) within a three (3) year period preceding the contract have had one or more public transactions (federal, state, or local) terminated for cause or default.</li> </ul>
<b>SCORE (for <u>all</u> Section B— Qualifications &amp; Experience Items above):</b> (maximum possible score = 30)		

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
<i>State Use – Evaluator Identification:</i>		

### TECHNICAL RESPONSE & EVALUATION GUIDE

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value    1 = poor    2 = fair    3 = satisfactory    4 = good    5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section scores as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		5	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the delivery of goods or scope of services, accomplish required objectives, and meet the State's project schedule.		5	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure delivery of specified goods or completion of the scope of services, and accomplish required objectives within the State's project schedule.		5	
	C.4.	Provide a narrative detailing the Respondent's experience delivering services similar to the scope described in this solicitation to other state agencies and how many other agencies are included in that experience.		20	
	C.5.	Provide a narrative illustrating how the Respondent will complete prior year EHR post-payment audits beginning with Payment Year 2015 in a manner that will bring the audits to the current year.		15	
	C.6.	Provide a narrative illustrating how the Respondent will continue the EHR post-payment audits throughout the remainder of the program, which is expected to be Payment Year 2021.		15	
	C.7.	Provide a sample draft audit report for an EHR post-payment audit. Describe how the respondent will advise TennCare of the outcome of audit activities and draft notice for auditees, which will be subject to TennCare approval		15	
	C.8.	Provide a narrative illustrating how the Respondent will maintain working papers for each audit and how the Respondent will transfer those working papers to the State for retention in accordance with state policies.		15	
	C.9.	Provide a narrative illustrating how the Respondent delivered presentations on audit topics related to the EHR incentive program.		5	

<b>RESPONDENT LEGAL ENTITY NAME:</b>					
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			<b>Total Raw Weighted Score:</b> (sum of Raw Weighted Scores above)		
<b>Total Raw Weighted Score</b>			<b>X 70</b>		
<b>Maximum Possible Raw Weighted Score</b> <i>(i.e., 5 x the sum of item weights above)</i>			<b>= SCORE:</b> <i>(maximum possible score)</i>		
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>					

**STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

**The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
5. The Respondent will comply, as applicable, with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
7. The Response submitted to the RFQ was independently prepared, without collusion, and under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with the request or any potential resulting contract.
9. The Response submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106." For reference purposes, the list is currently available online at:  
<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library/public-information-library.html>.

**By signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this request and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.**

**SIGNATURE & DATE:**

---

**PRINTED NAME & TITLE:**

---

**LEGAL ENTITY NAME:**

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**REFERENCE QUESTIONNAIRE**

The standard reference questionnaire provided on the following pages of this attachment **MUST** be completed by all individuals offering a reference for the Respondent.

The Respondent will be responsible for obtaining completed reference questionnaires as required (refer to RFQ Attachment B, General Qualifications & Experience Items, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Proposal.

**RFQ # 31896-00602 REFERENCE QUESTIONNAIRE**

**RESPONDENT NAME:** RESPONDENT NAME (completed by respondent before reference is requested)

The "respondent name" specified above, intends to submit a response to the State of Tennessee in response to the Request for Qualifications (RFQ) indicated. As a part of such response, the respondent must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the respondent.

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

(3) **What goods or services do/did the vendor provide to your company or organization?**

- (4) What is the level of your overall satisfaction with the vendor of the goods or services described above?

*Please respond by circling the appropriate number on the scale below.*

	1	2	3	4	5	
least satisfied						most satisfied

If you circled 3 or less above, what could the vendor have done to improve that rating?

- (5) If the goods or services that the vendor provided to your company or organization are completed, were the goods or services completed in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the vendor is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the vendor's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery do/did the vendor excel?
- (9) In what areas of goods or service delivery do/did the vendor fall short?

- (10) What is the level of your satisfaction with the vendor's project management structures, processes, and personnel?

*Please respond by circling the appropriate number on the scale below.*

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

- (11) Considering the staff assigned by the vendor to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

*Please respond by circling the appropriate number on the scale below.*

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

- (12) Would you contract again with the vendor for the same or similar goods or services?

*Please respond by circling the appropriate number on the scale below.*

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?



**REFERENCE SIGNATURE:**

(by the individual completing this  
request for reference information)

---

(must be the same as the signature across the envelope seal)

**DATE:**

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**RFQ # 31865-00602 PRO FORMA CONTRACT**

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFQ.

## ATTACHMENT G

**\*See Attachment G listed on the RFQ Website:**

**<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities.html>**

**\*This section will not be scored and is for cost reference only. Directions listed in RFQ section 3.3.2.2 Cost Proposal must be followed. Only the top three (3) highest technical responses will have their EHR Audit Fees opened. All other submissions will remain sealed.**



## CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

<b>Begin Date</b>	<b>End Date</b>	<b>Agency Tracking #</b>	<b>Edison Record ID</b>		
<b>Contractor Legal Entity Name</b>			<b>Edison Vendor ID</b>		
<b>Goods or Services Caption</b> (one line only)					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b>			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
<b>TOTAL:</b>					
<b>Contractor Ownership Characteristics:</b> <input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Disabled Owned Business (DSBE) <input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input type="checkbox"/> Other		Describe the selection process used and submit a Special Contract Request			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**DIVISION OF TENNCARE**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare ("State" or "TennCare") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Medicaid Electronic Health Records (EHR) Incentive Payment Program Audit Services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2 Definitions. As used in this Contract:

- a. "Audit Plan" means the risk-based plan for post-payment AIU and MU Audits of EPs and EHs developed and implemented by the Contractor in accordance with sections A.3.a-d of this Contract;
- b. "Certified Electronic Health Record Technology" or "Certified EHR Technology" has the meaning indicated 42 U.S.C.A. § 1396b(t)(3)(A), viz. a qualified electronic health record as defined in 42 U.S.C.A. § 300jj(13) that is certified pursuant to 42 U.S.C.A. § 300jj(11)(c)(5) as meeting the applicable standards adopted under 42 U.S.C.A. § 300jj(14).
- c. "Control Memorandum" means a formal document in writing that contains the history, background, and any other pertinent information to the issue being addressed in the document and which is used for the orderly investigation, escalation, and resolution of all matters or questions arising during the term of this Contract that do not require a contract amendment as described in Section D.3;
- d. "DCRC" means TennCare's Director of Civil Rights Compliance;
- e. "Eligible Professional" or "EP" has the meaning established at 42 C.F.R. § 495.304(b);
- f. "Eligible Hospital" or "EH" has the meaning established at 42 C.F.R. § 495.304;
- g. "Information Systems Council" or "ISC" means that certain Tennessee Information Systems Council established pursuant to T.C.A. § 4-3-5501 and charged with developing policy guidelines for the overall management of Tennessee's information systems and other duties set forth at T.C.A. § 4-3-5502;
- h. "Key Personnel" means the specific staff roles within the Contractor's staff that are identified in section A.7.b.vi of this Contract and which are subject to heightened requirements on matters including but not limited to availability, notice of staffing changes, and TennCare's right to review and approve candidates.
- i. "Limited English Proficiency" or "LEP" describes individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English and may be eligible to receive free language assistance for a particular type of service, benefit, or encounter;
- j. "Monthly Status Report" means the report prepared by the Contractor in a format specified by TennCare in accordance with section A.4.a of this Contract. The contents of the Monthly Status Report shall include but not be limited to a schedule of upcoming audits, a list of audits currently in progress, a list of completed audits, and any findings resulting from the procedures performed.

- A.3. Audit Services. The Contractor shall provide audit services for TennCare's Medicaid Electronic Health Records (EHR) Incentive Payment Program, established under 42 U.S.C.A. § 1396b(a)(3)(F) and 42 C.F.R. § 495. The Contractor shall provide audit services with regard to payments made by TennCare to Eligible Professionals (EPs) as defined at 42 C.F.R. § 495.304 and Eligible Hospitals (EHs) regarding their meaningful use of Certified EHR Technology from payment year 2015 through the end of the program, which is anticipated to be in 2021. If 42 C.F.R. § 495.322 or other applicable federal regulations are amended to change the final due date for these audits, the Contractor shall, at no additional cost to the State, adjust the completion date of all audits accordingly to establish compliance with the new regulations. The Contractor shall conduct adopt, implement, and upgrade audits (AIU audits) and meaningful use audits (MU audits), which include but are not limited to testing the accuracy of the attestation information provided by EPs and EHs regarding their meaningful use of certified EHR technology.
- a. The Contractor shall develop a risk-based plan and program for post-payment AIU and MU Audits of EPs and EHs ("the Audit Plan"). The Audit Plan shall, at a minimum:
    - i. Provide a written statement on how the Contractor will complete the prior years' audits still outstanding from 2015 forward;
    - ii. Provide a written statement on how the Contractor will continue the post-payment audits throughout the remainder of the EHR Incentive Payment Program scheduled to be completed by December 31, 2022;
    - iii. Establish risk criteria for use in selecting audit samples; and
    - iv. Include the methodology and procedures the Contractor intends to use to verify eligibility of EHs and EPs for the incentive payments.
  - b. No later than January 31, 2019, the Contractor shall submit the Plan to the State. Upon the State's approval in writing, the Contractor shall implement the Plan by commencing AIU and MU audits.
  - c. At no additional cost to the State, the Contractor shall review and update the Plan upon TennCare's written request.
  - d. The Contractor shall select EPs and EHs for post-payment AIU and MU Audits, and submit these sample selections to TennCare for approval. The sample selection shall represent ten percent (10%) of all EHs and EPs for each payment year audited, unless TennCare directs otherwise in writing. Upon TennCare's written approval, the Contractor shall test the samples in accordance with section A.3.i.i of this Contract. The Contractor shall select samples for testing through use of the risk criteria established in the Plan. In selecting samples for submission to the State, the Contractor shall not vary from the risk criteria established in the Plan without TennCare's prior written approval.
  - e. The Contractor shall provide draft audit reports to TennCare for approval and shall not issue audit reports to an EP or EH unless directed to do so in writing by the State. The Contractor shall deliver to the State draft letters advising auditees of the outcome of audit activities in a form and format to be determined by the State. The Contractor shall submit applicable audit working papers to TennCare with each draft audit report submission for retention in accordance with State policies. The State may provide the Contractor with specific instructions regarding audit working papers or other aspects of the audit process outlined in the Plan through a Control Memorandum as defined below pursuant to Contract Section A.9.
  - f. The Contractor shall provide assistance to TennCare in updating TennCare's EHR Audit Strategy, State Medicaid Health Plan as requested by the State. The Contractor shall perform all work related to this deliverable at no additional cost to the State.
  - g. No later than fifteen (15) days after the conclusion of each calendar quarter, the Contractor shall provide TennCare the necessary data for submission in the state regional office data tool in order for TennCare to submit this to CMS. The Contractor shall perform all work related to this deliverable at no additional cost to the State.

- h. The Contractor shall deliver presentations on audit-related topics at such time and in such manner as may be requested by TennCare.
- i. The Contractor shall perform all work under this Contract in accordance with the following standards. Contractor shall be in compliance with the most current version of these standards applicable at the time the services are rendered.
  - i. The meaningful use objectives, measures, and demonstration criteria set forth in 42 C.F.R. §§ 495.20 through 495.24 and 42 C.F.R. § 495.40.
  - ii. Government Auditing Standards issued by the Comptroller General of the United States and available at <https://www.gao.gov/assets/590/587281.pdf> and <https://www.gao.gov/assets/700/694881.pdf>;
  - iii. Attestation standards established by the American Institute of Certified Public Accountants and available at <https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/at-c-00105.pdf>; and
  - iv. International Standards for the Professional Practice of Internal Auditing (Revised, January 1, 2017) issued by the Institute of Internal Auditors and available for download at <https://na.theiia.org/standards-guidance/mandatory-guidance/pages/standards.aspx>.

A.4. Reports. The Contractor shall timely submit to TennCare any and all reports required under this Contract.

- a. On a monthly basis, the Contractor shall provide TennCare with the Monthly Status Report no later than the fifth calendar day of the following month. The contents of the Monthly Status Report shall include but not be limited to the following:
  - i. A schedule of upcoming audits;
  - ii. A list of audits currently in progress;
  - iii. A list of completed audits; and
  - iv. Any findings resulting from the procedures performed.
- b. On a quarterly basis, the Contractor shall submit the quarterly nondiscrimination compliance report as detailed in A.14.c.
- c. Such other reports as TennCare may request from time to time through Control Memoranda as defined in Contract Section A.9.

A.5. Contractor Availability. The Contractor shall meet with TennCare at least once per month to discuss the Monthly Status Report, the Contractor's performance, any necessary changes in the Contractor's practices, and planning. The State may direct that the Contractor participate in such meetings in person, by telephone, via videoconference, or any other means. The Contractor shall ensure that its Key Personnel, as defined in Contract Section A.7.b, are available for such meetings and attend in accordance with the State's instructions.

A.6. Coordination with Other Contractors and State Agencies. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with, any and all other State contractors and State agencies. If the State requires the Contractor to share with or obtain from another state contractor or state agency any records or information that are not subject to public disclosure

under applicable State or federal law, rules, or regulations, the Contractor shall, , keep the records or information confidential and, at TennCare's request, shall any sign documents including but not limited to, Non-Disclosure Agreements (Non-Disclosure Documents).

All records or information that the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other state contractor or state agency, that the state contractor or state agency considers to be proprietary or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, to the extent permitted by law, shall be governed by such Non-Disclosure Document.

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor or State agency, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C.3 of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment for any such coordination services.

- A.7. Staffing. The Contractor shall hire and maintain staff and management in accordance with the terms of this Contract.
- a. Workforce Requirements. The Contractor shall provide dedicated staff in sufficient numbers to ensure timely completion of the Contractor's duties under this Contract. In its sole discretion, the State shall have the right to require additional employee staffing levels in order to perform the services required under this Contract.
    - i. The Contractor shall maintain an alphabetical list by last name listing of the titles, responsibilities, location, telephone numbers, and email addresses for all Contractor employees and subcontractors that will perform services under this Contract. The Contractor shall provide the list of the Contractor's employees and subcontractors to the State within thirty (30) days of the commencement of the Contract's term, and shall provide an updated list to the State of any changes to the Contractor's employees or subcontractors no later than ten (10) days after changes in staff performing work under this Contract or as otherwise directed by the State.
    - ii. The Contractor shall ensure that all employees, contractors or subcontractors who perform any services under this Contract shall have the necessary credentials, licenses, and certifications required to perform the work under this Contract. The Contractor shall ensure that all persons who perform work under this Contract have prior experience with EHR incentive payment audits.
    - iii. The Contractor shall cause all of its employees, contractors, and consultants who perform work under this Contract to be trained in compliance with Medicaid and the federal Children's Health Insurance Program (CHIP), known in Tennessee as "CoverKids", safeguarding regulations, HIPAA/HITECH and any other federal or State privacy and security laws, including, but not limited to the Gramm-Leach Bliley Act (GLBA); the Privacy Act of 1974, as amended; the Tennessee Consumer Protection Act, Identity Theft Safeguards, The Red Flag Rules; the Tennessee Consumer Protection Act, Identity Theft Safeguards, and 26 U.S.C. § 6103(p)(4) that applies to authorized recipients of FTI. The Contractor and its subcontractors shall comply with the provisions of 42 U.S.C. § 1396a(a)(68) et seq. as applicable, regarding policies and education of employees as regards the terms of the False Claims Act and whistleblower protections.
  - b. Key Personnel. The Contractor shall submit to the State for prior review and approval the names, titles, and resumes of candidates for initial engagement as Key Personnel and any time a change in Key Personnel is proposed.



- i. If, during the term of this Contract, any Key Personnel should leave the Contractor's employment, the Contractor shall fill the vacant Key Personnel position within thirty (30) days from the date of the vacancy's inception. The Contractor shall fill the vacancy with a temporary replacement within three (3) days of such termination or resignation.
- ii. If the State requests in writing that specific Key Personnel no longer perform services under this Contract, the Contractor shall provide a temporary replacement for the outgoing Key Personnel within three (3) days of such request, at which time the outgoing Key Personnel shall cease any work in connection with this Contract. Within thirty (30) days from the State's written request, the Contractor shall provide a permanent replacement for the outgoing Key Personnel that is satisfactory to the State. Failure to timely replace Key Personnel may result in Liquidated Damages as set forth in Attachment B.
- iii. Upon the State's request and in the sole discretion of the State, the Contractor shall offer the State an opportunity to interview any proposed replacement(s) to Key Personnel. The State may, at any time during the Contract, period deny the employment or use of any employee, contractor, or subcontractor, assigned by the Contractor to perform work under this Contract. Upon notification by the State to the Contractor that a employee, contractor, or subcontractor has been disapproved, the employee, contractor, or subcontractor shall immediately cease work under this Contract.
- iv. The Contractor shall not remove any approved Key Personnel from her/his assigned duties under the Contract for any period of time exceeding two (2) weeks without State prior written approval. The Contractor shall notify the State in writing of any proposed change in Key Personnel at least thirty (30) days prior to the change or as soon as the change is known if the Key Personnel's notification to the provided to the Contractor is less than thirty (30) days. The Contractor shall not be required to provide notification to the State if Key Personnel are on sick or vacation leave or are attending corporate functions for less than one (1) week.
- v. For each position designated as Key Personnel, and for any other Contractor employees, contractors, or subcontractors, requested by the State, the Contractor shall identify the individual(s) who shall provide the services assigned to the Key Personnel, in the event the Key Personnel are unable to perform the Contractor's services required by this Contract. Any new Key Personnel shall remain subject to the review and approval of the State, as defined this subsection b.
- vi. The Contractor shall designate an employee, contractor, or subcontract subcontractor for each of the following roles, which constitute Key Personnel:
  1. The Project Director. The Project Director shall have his or her primary office within the Nashville metropolitan area, and shall assume operational responsibilities, oversee quality review responsibilities, coordinate operations with the State, and provide leadership and expertise, as approved by the State. The Project Director must be a licensed auditor with experience in the Medicaid EHR Incentive Payment Program and MU Audits.

The Project Director shall be available to the State in person at TennCare offices in Nashville, Tennessee at the State's request. The Project Director shall serve as the Contractor's point of contact with the State. The Project Director shall have the authority to make decisions and resolve problems on behalf of the Contractor with the State. The

Project Director shall attend the monthly status meeting referenced in Contract Section A.5, and any other meetings as directed by TennCare.

2. Nondiscrimination Compliance Coordinator. The Nondiscrimination Compliance Coordinator (NCC) serve as the primary point of contact for the Contractor's compliance with the nondiscrimination requirements set forth in section A.12 of this Contract. The NCC shall perform duties in accordance with section A.12 of this Contract. The Contractor shall not be required to ensure that civil rights compliance is the sole function of the designated NCC.

A.8. Problem Notification. At the point at which the Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize the Contractor's ability to perform any function as specified in this Contract, the Contractor shall notify the State's contact person in Section D.2 of this Contract or other state personnel, as directed by the State, in person, via phone, or by email within one (1) hour if the problem is discovered within the business day and no later than 9:00 a.m. CT the following business day if the problem occurs after close of business.

- a. Corrective Action Plan. Unless otherwise directed by the State, the Contractor shall within three (3) business days of a problem's occurrence deliver comprehensive written documentation, including a Corrective Action Plan that describes how the Contractor shall determine the root cause of the issue, remedy the immediate operational challenges, and prevent this or similar problems from occurring again.

A.9. Problem Change and Management Protocol. The State and Contractor shall use Control Memoranda to clarify or enforce Contract requirements, to issue instruction to the Contractor or request instruction from the State, to document submission of Contract deliverables, to document required action, approval or disposition, including, but not limited to, disputes or appeals regarding actual or liquidated damages assessments by the State.

The Parties shall designate the individual(s) authorized to initiate Control Memoranda. All Control Memoranda submitted to or by the State shall be reviewed and prioritized by the TennCare Director of Internal Audit (State's Project Director) or her designee. All Control Memoranda submitted to the Contractor shall be signed and approved by the State's Project Director or her designee. All Control Memoranda submitted by the Contractor shall be signed and approved by the Contractor's authorized representative. Each Control Memorandum shall contain a unique identification number.

The Contractor shall comply with all Control Memoranda. The Contractor's failure to complete or comply with Control Memoranda as required may result in sanctions including liquidated damages listed in Attachment B (Liquidated Damages) and possible termination of the Contract.

The various components of the Control Memorandum Process are described below. When issued by the State, the Control Memorandum may include one (1) or more of the following six (6) notices or instructions, as applicable, and shall designate a reasonable due date for Contractor's reply or other action. When the Control Memorandum pertains to actual damages or liquidated damages, the State may issue consecutive Control Memoranda incorporating the applicable notices or instructions as described below.

- a. "On Request Report" (ORR) means a request included in the Control Memorandum issued by the State directing the Contractor to provide information by the date and time specified by the State. The State shall treat an ORR as a request for information only, and shall not use it to direct that a given task be completed. Failure to complete or comply with an ORR by the due date may result in the assessment of actual damages, if permitted under this Contract, and/or the assessment of liquidated damages listed in Attachment B.

- b. "Control Directive" means an instruction included in the Control Memorandum issued by the State that requires the Contractor to complete a certain deliverable or perform any other request from the State within the scope of the Contract, by a designated due date. Once a Control Directive has been issued with the Control Memorandum, it shall be considered to be incorporated into this Contract as a deliverable. The Contractor's failure to complete or comply with the Control Directive by the due date may result in the assessment of actual damages, if permitted under this Contract, and/or the assessment of liquidated damages listed in Attachment B for each day the Control Directive is not completed or complied with as required.
- c. "Potential Actual Damages Notice" or "Potential Liquidated Damages Notice" (PADN/PLDN) means a notice included in the Control Memorandum issued by the State to the Contractor where the State has determined that a potential contract performance or compliance issue exists and the State is contemplating assessing actual damages and/or liquidated damages listed in Attachment B. The State shall notify the Contractor of any potential contract performance or compliance issue within ninety (90) days of the Contractor's written notice of the issue to the State through a Control Memorandum or the State's discovery of the issue. The PADN/PLDN shall identify the Contract provision(s) on which the State bases any potential contract performance or compliance issue and, if available, a projection of the potential actual damages and/or liquidated damages. The parties acknowledge that the total amount of actual damages and/or liquidated damages specified in the PADN/PLDN may not be the final amount assessed. Contractor may, in an attempt to settle this matter informally, within ten (10) business days of receipt of the PADN/PLDN, elect to respond to the PADN/PLDN through the Control Memorandum process. If the State, after review of any information provided by Contractor, finds that damages are warranted, the State shall so notify the Contractor through a Control Memorandum. The timely issuance of a PADN/PLDN satisfies the State's requirement to provide notice of potential damages and preserves the State's rights under the Contract to assess damages. This is the first step in the assessment of actual or liquidated damages.
- d. "Calculation of Potential Actual Damages Notice" or "Potential Liquidated Damages Notice" (CPADN/CPLDN) means a notice included in the Control Memorandum issued by the State to Contractor that calculates the amount of potential actual damages or potential liquidated damages. If the Contractor elects to formally appeal either the basis for or calculation of potential actual or potential liquidated damages, the Contractor shall file an appeal by written response to the Control Memorandum within ten (10) business days of receipt of the State's CPADN/CPLDN. The State's Project Director (or his/her designee) shall review the appeal and provide notice of determination through a Control Memorandum. If the Contractor disagrees with the State's initial appeal determination or the Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may request through a Control Memorandum to the State, escalation of the appeal to the State's Project Director (or his/her designee) for reconsideration and final determination. Contractor shall send such notice within ten (10) business days of receipt of the State's initial appeal determination. The notice of the final determination made by the State's Project Director (or his/her designee) will be provided to the Contractor through a Control Memorandum. If the Contractor loses this formal appeal, the State in its sole discretion, may assess actual or liquidated damages. This is the second step in the assessment of actual or liquidated damages. The State may not issue a CPADN/CPLDN before also issuing a PADN/PLDN.
- e. "Intent to Assess Final Actual Damages Notice" or "Intent to Assess Liquidated Damages Notice" (IADN/IALDN) means a notice included in the Control

Memorandum issued by the State to Contractor that the State is assessing actual damages and/or liquidated damages. This notice shall identify the Contract provision(s) on which the State bases the damages and specify the total amount of actual damages and/or liquidated damages the State intends to assess. At this point, the State may elect to withhold damages from payments due to Contractor. This is the third step in the assessment of actual or liquidated damages. The State may not issue an IADN/IALDN without first issuing a CPADN/CPLDN.

- f. "Assessment of Actual Damages Notice" or "Assessment of Liquidated Damages Notice" (AADN/ALDN) mean a notice included in the Control Memorandum issued by the State containing a final demand for payment of actual and/or liquidated damages. This is the fourth step in the assessment of actual or liquidated damages. The State may not issue an AADN/ALDN before also issuing an IADN/IALDN.

A.10. Litigation Support. If any litigation should arise that involves TennCare or its designee as a party before any court or tribunal, the Contractor shall cooperate fully and timely with any TennCare attorneys or paralegals in connection with the matter. Contractor shall make its employees, contractors, or subcontractors available to testify in Tennessee, whether in person or by telephone, before a court, tribunal, or by deposition. The Contractor shall be available to prepare as determined necessary by TennCare's counsel for any appearance in legal proceedings. Upon TennCare's written request, the Contractor's employees shall appear in any Tennessee court or tribunal without resort to issuance of a subpoena. Upon TennCare's written request, the Contractor shall promptly comply with a discovery demand by any party, or an order issued by any Tennessee court or tribunal, and shall promptly provide TennCare with all requested information within Contractor's possession, control, custody, or knowledge. The Contractor shall provide any and all work, services, or other deliverables required by this Contract Section A.10 at no additional cost to the State. The Contractor's obligations established in this Section shall survive the termination or expiration of this Contract.

A.11. Disaster Recovery. Within thirty (30) days of the start of this Contract's Term, the Contractor shall create a disaster recovery plan that complies with Policy 9 of the Information Systems Council (ISC) and any standards promulgated by the ISC pursuant to T.C.A. § 4-3-5501 et seq. The Contractor shall submit the same to TennCare within 30 days of the start of this Contract's Term for review and approval. Upon TennCare's approval, the Contractor shall adopt the disaster recovery plan. The Contractor shall review the disaster recovery plan annually to ensure that it contains accurate and up-to-date information. If it is necessary to revise the disaster recovery plan, the Contractor shall submit such revisions to TennCare for review and approval.

- a. The plan shall include, but not be limited to:
  - i. Checkpoint/restart capabilities;
  - ii. Retention and storage of backup files and software;
  - iii. Hardware/network backup plan for the Contractor's records;
  - iv. Recovery procedures for loss of manual files and hardcopy documents; and
  - v. Annual test of the disaster recovery plan.
- b. The Contractor shall update, test and maintain the disaster recovery plan so as to minimize any disruption TennCare operations. Any changes or updates to the disaster recovery plan are subject to TennCare review and approval. The disaster recovery plan shall address all processing, files, and software used or maintained by the Contractor.
- c. The disaster recovery plan and procedures shall, at a minimum, provide the following:

- i. Continued processing assuming the loss of the primary processing site.
- ii. A detailed backup plan and procedures, including the off-site storage of crucial transaction and master files. The plan and procedures shall include a detailed schedule for backing up critical files and their rotation to an off-site storage facility.
- iii. The maintenance of current system software, including source code, and documentation at an off-site location.

A.12. Nondiscrimination Compliance Requirements.

- a. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.
  - i. Nondiscrimination Compliance Coordinator. In order to demonstrate compliance with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92) the Contractor shall designate a staff person to be responsible for nondiscrimination compliance as required in section A.7.b.vi.2 .

The Contractor shall designate a an NCC in accordance with section A.7.b of this Contract who shall be responsible for compliance with the nondiscrimination requirements set forth in this Contract. The Contractor shall provide in writing to TennCare the name and contact information for the NCC.identity of the Contractor to TennCare. The Contractor agrees that its civil rights compliance staff member will work directly with TennCare's DCRC in order to implement and coordinate nondiscrimination compliance activities.

- ii. Policies and Procedures. The Contractor shall, at a minimum, implement nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
- iii. Implementation. Prior to implementation of this Contract, the NCC shall participate in a readiness review phase. The DCRC shall provide the NCC with the nondiscrimination/civil rights readiness review expectations for this Contract and provide technical assistance to the NCC.
  - 1. The NCC shall provide the Contractor's written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to DCRC. These policies shall include topics, such as, discrimination complaint workflows and procedures, the provision of effective communication services (i.e. language assistance services to individuals with Limited English Proficiency and auxiliary aids or services to individuals with disabilities), and providing other forms of assistance to individuals with disabilities (i.e. reasonable accommodations). Effective Communication may be achieved by providing interpretation and translation services and other forms of auxiliary aids or services, including, Braille and large print and shall be based on the needs of the individual and/or the individual's representative. Any nondiscrimination policies and procedures that are specific to TennCare program members and/or participants shall be prior approved in writing by the DCRC.
  - 2. The Contractor's NCC shall develop a nondiscrimination training plan within thirty (30) days of the implementation of this Contract and shall provide a copy of such training plan to DCRC. This training plan shall detail how the

Contractor's annual civil rights training will be provided to staff and tracked for compliance. The plan shall include the Contractor's procedures for training new hires and capturing the new hire training data. On a quarterly and annual basis, the Contractor's new hire and annual training data shall be provided to DCRC. If needed, the NCC may request an extension of time for providing the training plan to DCRC. Thereafter, the Contractor shall update the training plan as needed to conform to changes in federal and State law and provided to the DCRC on an annual basis and upon request.

- iv. Records. The Contractor shall keep such records as may be necessary in order to submit timely, complete and accurate compliance reports that may be requested by the U.S. Department of Health and Human Services ("HHS"), the U.S. Department of Justice ("DOJ"), TennCare, and the Tennessee Human Rights Commission ("THRC") or their designees. If requested, the information shall be provided in a format and timeframe specified by HHS, DOJ, TennCare, or THRC. The requested information may be necessary to enable HHS, DOJ, TennCare, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws. For example, the Contractor should have available data showing the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination. Further examples of data that could be requested can be found at 45 C.F.R. § 80.6 and 28 C.F.R. § 42.406.
- v. Access. The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 80.6 to HHS, DOJ, TennCare, and THRC or their designees during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.
- vi. Complaint Forms. The Contractor shall use and have available to individuals TennCare's discrimination complaint forms for the TennCare program(s) covered under this contract. The Contractor shall provide the discrimination complaint forms to individuals upon request and shall make the discrimination complaint forms available on the Contractor's website. The Contractor shall ensure, at a minimum, that TennCare's discrimination complaint forms are available in English, Spanish, and Arabic. The DCRC shall provide the NCC with TennCare's discrimination complaint forms that are required under this contract.

The Contractor shall, as necessary, provide assistance to individuals with filing discrimination complaints with the TennCare program(s) covered under this Contract. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of federal financial assistance under this contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to the DCRC.
- vii. Nondiscrimination Notice and Taglines. As required by the applicable federal civil rights laws, including 45 C.F.R. pt 45, the Contractor shall ensure that Significant publications and significant communications, including small sized publications and communications, that are targeted to beneficiaries, participants, enrollees, applicants, and members of the public are printed with the notice of nondiscrimination and LEP taglines as required by TennCare and set forth in TennCare's tagline templates, incorporated herein by reference and attached hereto as Attachments D and E. Written materials specific to TennCare's programs' members shall be prior approved in writing by TennCare prior to the materials being sent to these individuals.

viii. Limited English Proficiency ("LEP"). In accordance with 68 Fed. Reg 47311-02, within ninety (90) calendar days of notification from TennCare, the Contractor shall translate and make available all vital Contractor documents related to this Contract to each LEP group identified by TennCare in accordance with the applicable standards set forth below:

1. If a LEP group constitutes five percent (5%) or 1,000 persons, whichever is less, of the population targeted under this Contract, the Contractor shall translate vital documents into the language of the LEP. The Contractor shall translate any other documents orally; or
2. If there are fewer than fifty (50) individuals in a language group that is part the population targeted under this Contract that reaches the five percent (5%) trigger in (a), the Contractor shall inform those individuals that it does not provide written translation of vital documents but written notice in that group's primary language of the right to receive competent oral interpretation of those written materials, free of cost.
3. At a minimum, the Contractor shall make available all vital Contractor documents in Spanish.

b. Nondiscrimination Compliance Reports. The Contractor shall submit the following nondiscrimination compliance deliverables to TennCare as follows:

- i. Annual Compliance Questionnaire. Annually, the DCRC shall provide the NCC with a Nondiscrimination Compliance Questionnaire. The NCC shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to DCRC within sixty (60) days of receipt of the Questionnaire with any requested documentation, which shall include, the Contractor's Assurance of Nondiscrimination. The Contractor shall ensure that the signature date of the Contractor's Nondiscrimination Compliance Questionnaire is the same as the signature date of the Contractor's Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by TennCare.
  1. As part of the requested documentation for the Nondiscrimination Compliance Questionnaire, the NCC shall submit copies of the Contractor's nondiscrimination policies and procedures (e.g. 45 C.F.R. § 80.3; 45 C.F.R. § 92.101) in the provision of its services, programs, or activities provided under this Contract.
  2. The NCC shall include, as part of the requested documentation for the Nondiscrimination Compliance Questionnaire, reports that capture data for all language and communication assistance services used and provided by the Contractor under this Contract. The Contractor shall ensure that language and communication assistance section of the questionnaire contains:
    - A. the names of the Contractor's language and communication assistance service providers;
    - B. the languages in which interpretation and translation services are available;
    - C. the auxiliary aids or services that are provided and are available;
    - D. the hours that language and communication assistance services are available;
    - E. numbers individuals call to access language and communication assistance services;
    - F. a separate Excel spreadsheet report that captures a listing of language and communication assistance services that were requested by members and/or participants (e.g. Arabic; Braille) and

the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation).

Upon request, the NCC shall provide a more detailed report that contains the requestor's name and identification number, the requested service, the date of the request, the date the service was provided, and the name of the service provider.

- ii. Quarterly Compliance Reports. The NCC shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
  1. A summary listing that captures the total number of the Contractor's new hires that have completed civil rights/nondiscrimination training and cultural competency training and the dates the trainings were completed for that quarter;
  2. A listing of the total number of the Contractor's employees that have completed annual civil rights training and cultural competency training and the dates completed for that quarter, if annual training was provided during that quarter.
  3. An update of all written discrimination complaints filed by individuals, such as, employees, members, participants, and subcontractors in which the discrimination allegation is related the provision of and/or access to TennCare covered services provided by the Contractor, which the NCC is assisting the DCRC with resolving. This update shall include, at a minimum: identity of the complainant, complainant's relationship to the Contractor, circumstances of the complaint; type of covered service related to the complaint, date complaint filed, the Contractor's resolution, date of resolution, and the name of the Contractor staff person responsible for adjudication of the complaint. For each complaint reported as resolved the Contractor shall submit a copy of the complainant's letter of resolution.
  4. The NCC shall provide a listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to TennCare's covered services provided by the Contractor. The Contractor shall ensure that the listing includes, at a minimum, the:
    - A. identity of the complainant;
    - B. complainant's relationship to the Contractor'
    - C. circumstances of the complaint;
    - D. type of covered service related to the complaint;
    - E. date complaint filed;
    - F. Contractor's resolution;
    - G. date of resolution.

When such reports are made, the Contractor shall offer to provide the discrimination complaint forms to the individual making the report.

5. The Contractor shall ensure that the language and communication assistance report shall capture a summary listing of language and communication assistance services that were requested by members and/or participants e.g. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members and/or participants (i.e. interpretation; translation). Upon request, the NCC shall provide a more detailed report that contains the requestor's name and identification number, the requested service, the date of the request, the date the service was provided, and the name of the service provider.



- c. Discrimination Complaint Investigations. All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this contract shall be resolved according to the provisions of this Section and the below subsections:
- i. Discrimination Complaints against the Contractor and/or Contractor's Employees. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its employees related to the provision of and/or access to one of TennCare's programs are reported to the Contractor, the NCC shall send such complaints within two (2) business days of receipt to the DCRC. The DCRC shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees. The Contractor shall cooperate with TennCare during the investigation and resolution of such complaints. The DCRC reserves the right to request that the NCC assist with conducting the initial investigations and to suggest resolutions of alleged discrimination complaints. If the DCRC requests that the NCC assist TennCare with conducting the initial investigation, the NCC shall start the initial investigation within five (5) business days from the date of the request. The NCC shall provide the DCRC with all requested information, including but not limited to, the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. The DCRC shall review the NCC's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection c below. During the complaint investigation, the NCC shall have the opportunity to provide the DCRC with any information that is relevant to the complaint investigation. The Contractor shall take reasonable methods to keep such documentation and materials confidential, and shall not disclose the documentation or materials related to such investigation, to any third party unless otherwise required by law.
  - ii. Discrimination Complaints against the Contractor's subcontractors that are recipients of federal financial assistance under this Contract. Should complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors related to the provision of and/or access to one of TennCare's programs be reported to the Contractor, the NCC shall inform the DCRC of such complaints within two (2) business days from the date Contractor learns of such complaints. If the DCRC requests that the NCC assist TennCare with conducting the initial investigation, the NCC's nondiscrimination compliance officer shall start the initial investigation within five (5) business days from the date of the request. Once an initial investigation has been completed, the NCC shall report his/her determinations to the DCRC. At a minimum, the NCC's report shall include the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. The DCRC shall review the NCC's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. The DCRC reserves the right to investigate and resolve all complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors that are recipients of federal financial assistance under this Contract. The Contractor's providers and subcontractors that are recipients of federal financial assistance under this Contract shall cooperate with TennCare and the Contractor during discrimination investigations and resolutions.
  - iii. Corrective Action Plans to Resolve Discrimination Complaints. If a discrimination complaint against the Contractor or its employees or one of its subcontractors who are recipients of federal financial assistance under this contract, is determined by the DCRC to be valid, the DCRC shall, at its option, either (i) provide the Contractor with a corrective action plan to resolve the complaint, or (ii) request that the Contractor submit a proposed corrective action plan to the DCRC for review and approval that specifies what actions the Contractor

proposes to take to resolve the discrimination complaint. Upon provision of the corrective action plan to Contractor by the DCRC, or approval of the Contractor's proposed corrective action plan by the DCRC, the Contractor shall implement the approved corrective action plan to resolve the discrimination complaint.

TennCare, in its sole discretion, shall determine when a satisfactory discrimination complaint resolution has been reached and shall notify Contractor of the approved resolution. A discrimination complaint resolution corrective action plan may consist of approved nondiscrimination training on relevant discrimination topics. Prior to use, the nondiscrimination training material shall be reviewed and approved by the DCRC. Time periods for the implementation of the corrective action plan nondiscrimination training shall be designated by TennCare.

- d. **Electronic and Information Technology Accessibility Requirements.** To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the Contractor shall comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92. To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher (For the W3C's guidelines see: <https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/> ) (More resources can be found at <https://www.w3.org/WAI/> and <https://www.access-board.gov/guidelines-and-standards/communications-and-it> ).

The Contractor agrees to perform regularly scheduled (i.e., automatic) scans and manual testing for Section 508 and the most current WCAG level AA or higher compliance for all user content and applications in order to meet the standards for compliance. The Contractor must ensure that any system additions, updates, changes or modifications comply with Section 508 and the most current WCAG level AA or higher. Commercial Off-the-shelf ("COTS") products may be used to verify aspects of Section 508 and the most current WCAG level AA or higher compliance.

Additionally, the Contractor shall comply with Title VI of the Civil Rights Act of 1964. In order to achieve Title VI compliance the Contractor should add a system function that allows users to translate the content into a language other than English. This requirement may be satisfied by the provision of a link to Google translate or other machine translate tool.

Should the system or a component of the system fail to comply with the accessibility standards, the Contractor shall develop and submit to TennCare for approval a noncompliance report that identifies the areas of noncompliance, a plan to bring the system or component into compliance, an alternative/work around that provides users with the equivalent access to the content, and a timeframe for achieving that compliance. TennCare shall review the noncompliance report to determine whether or not it is acceptable and should be implemented. Once the noncompliance report is approved by TennCare the Contractor may implement the compliance plan. TennCare, in its sole discretion, shall determine when a satisfactory compliance plan resolution has been reached and shall notify the Contractor of the approved resolution. If Contractor is unable to obtain content that conforms to WCAG 2.0 AA, it shall demonstrate through its reporting to TennCare that obtaining or providing accessible content would fundamentally alter the nature of its goods and services or would result in an undue burden.

- e. **Provider Participation, Reimbursement, or Indemnification.**

- i. The Contractor shall not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. The Contractor's ability to credential providers as well as maintain a separate network and not include any willing provider is not considered. The Contractor's written policies and procedures for the selection and retention of providers shall not discriminate against particular providers that

service high risk populations or specialize in conditions that require costly treatment;

- ii. The Contractor shall not discriminate against providers and entities in accordance with the federal prohibition against discrimination as provided for under the collective “federal health care provider conscience protection statutes,” referenced individually as the Church Amendments, 42 U.S.C. § 300a–7, section 245 of the Public Health Service Act, 42 U.S.C. § 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111–117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279–80.

A.13. Reporting and Investigating Suspected Fraud and Abuse.

- a. The Contractor shall cooperate with all appropriate state and federal agencies, including the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) and the Office of the Inspector General (OIG), in investigating fraud and abuse. In addition, the Contractor shall fully comply with T.C.A. § 71-5-2603 in performance of its obligations under this Contract.
- b. The Contractor shall adopt and implement processes for identification, investigation, and referral of suspected fraud cases.
- c. The Contractor shall notify TBI MFCU and TennCare Office of Program Integrity (OPI) in a timely manner regarding all internal and external tips with potential implications to TennCare providers’ billing anomalies and/or safety of TennCare enrollees. Along with a notification, the Contractor shall take steps to triage and/or substantiate these tips and provide simultaneous and timely updates to TBI MFCU and TennCare OPI when the concerns and/or allegations of any tips are authenticated.
- d. The Contractor shall report all tips, confirmed fraud, and suspected fraud and abuse to TennCare and the appropriate agency as follows:
  - i. All tips (any program integrity case opened within the previous two (2) weeks) shall be reported to TennCare OPI and TBI MFCU;
  - ii. Suspected fraud and abuse in the administration of the program shall be reported to TennCare OPI, TBI MFCU and/or OIG;
  - iii. All confirmed or suspected provider fraud and abuse shall immediately be reported to TBI MFCU and TennCare OPI; and
  - iv. All confirmed or suspected enrollee fraud and abuse shall be reported immediately to OIG.
- e. Pursuant to TCA 71-5-2603(d), the Contractor shall be subject to a civil penalty, to be imposed by the OIG, for willful failure to report fraud and abuse by recipients, enrollees, applicants, or providers to TennCare and OIG or TBI MFCU, as appropriate.
- f. Unless prior written approval is obtained from the agency to whom the incident was reported, after reporting suspected or confirmed fraud or abuse, the Contractor shall not take any of the following actions as they specifically relate to TennCare claims:
  - i. Contact the subject of the investigation about any matters related to the investigation;
  - ii. Enter into or attempt to negotiate any settlement or agreement regarding the incident; or

- iii. Accept any monetary or other thing of valuable consideration offered by the subject of the investigation in connection with the incident.
- g. The Contractor shall cooperate fully in any further investigation or prosecution by any duly authorized government agency, whether administrative, civil, or criminal. The Contractor shall provide, upon request, information, access to records, and access to interview Contractor's employees, contractors, and subcontractors.
- h. The Contractor shall, upon request and as required by this Contract or state and/or federal law, make available to the TBI MFCU and OIG any and all administrative records, financial records, medical records, and audit work papers relating to the performance of this Contract. The Contractor shall make the records available at no cost to the requesting agency. In addition, the Contractor shall allow TBI MFCU and OIG to access to the Contractor's place of business and access such documents during normal business hours, and at other hours determined by the TBI MFCU and OIG.

**B. TERM OF CONTRACT:**

This Contract shall be effective on TBD ("Effective Date") and extend for a period of forty-two (42) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

- B.1. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount (\$Number) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
  - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Annual PM Fee	\$ Number Yearly
AIU Desk Audit	\$ Number each
MU Desk Audit	\$ Number each

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Division of TennCare  
310 Great Circle Road  
Nashville. TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Finance and Administration, Division of TennCare;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
  - (13) Amount due for each compensable unit of good or service; and
  - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
  - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
  - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
  - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
  - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Deputy Commissioner  
Department of Finance and Administration  
Division of TennCare  
310 Great Circle Road  
Nashville TN 37243  
Telephone # (615) 507-6444  
FAX # (615) 253-5607

The Contractor:

Contractor Contact Name & Title  
Contractor Name  
Address  
Email Address  
Telephone # Number  
FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section A.12. (Nondiscrimination Compliance Requirements) and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section A.12 of this Contract.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.



- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract. In addition, the Contractor shall comply with the provisions of Contract Section E.13 (Applicable Laws, Rules, Policies, and Court Orders), and this Section D.25 shall not be deemed to limit or abridge any requirement set forth in Section E.13, Applicable Laws, Rules, Policies and Court Orders.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments A, B, C, and D.
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance

Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events

which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

## **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or

permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.4. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.5. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

- E.6. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.



- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- E.8. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 31865-00602 (Attachment D) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810> .

- E.9 Liquidated Damages.

In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.9. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

- E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII

only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
  - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
    - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

E. 12. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, et seq., and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

E.13. Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, TENNCARE waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare program. Such compliance shall be performed at no additional cost to the State.

E.14. Business Associate. As the Contractor will provide services to TENNCARE pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TENNCARE Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TENNCARE Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a

business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement.

- E.15. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify TENNCARE's Privacy Office immediately upon becoming aware of and in no case later than 48 hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E.16. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between TENNCARE and Contractor via the data transfer method specified in advance by TENNCARE. This may include, but shall not be limited to, transfer through TENNCARE's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by TENNCARE, may, at the option of TENNCARE, result in liquidated damages as set forth on Contract Attachment B, hereto.
- E.17. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
- a. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
  - b. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TENNCARE, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TENNCARE program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TENNCARE the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TENNCARE will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TENNCARE program.
  - c. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
  - d. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TENNCARE.
  - e. The Contractor shall restrict access to the data obtained from TENNCARE to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TENNCARE's prior written approval.
  - f. The Contractor shall ensure that its employees:
    - (1) properly safeguard PHI/PII furnished by TENNCARE under this Contract from loss, theft or inadvertent disclosure;

- (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
- (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
- (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
- (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

Contractor employees who access, use, or disclose TENNCARE or TENNCARE SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

- g. Loss or Suspected Loss of Data—If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must contact TENNCARE immediately upon becoming aware to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at [http://www.tn.gov/assets/entities/tenncare/attachments/phi\\_piiworksheet.pdf](http://www.tn.gov/assets/entities/tenncare/attachments/phi_piiworksheet.pdf) to quickly gather and organize information about the incident. The Contractor must provide TENNCARE with timely updates as any additional information about the loss of PHI/PII becomes available.

If the Contractor experiences a loss or breach of said data, TENNCARE will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.

- h. TENNCARE may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TENNCARE, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TENNCARE SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract Section E.20.
- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

j. Definitions

- (1) "SSA-supplied data" or "data" as used in this section – information, such as an individual's social security number, supplied by the Social Security Administration to TENNCARE to determine entitlement or eligibility for federally-funded programs (covered by a CMPPA between SSA and F&A, and IEA between SSA and TENNCARE).
- (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII)(45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic

media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.

- (3) "Individually Identifiable Health Information"— information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.18. Medicaid and CHIP - The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

a) Purposes directly related to the administration of Medicaid and CHIP include:

- 1) establishing eligibility;
- 2) determining the amount of medical assistance;
- 3) providing services for beneficiaries; and,
- 4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

b) The Contractor must have adequate safeguards to assure that:

- 1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information
- 2) received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and, the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

c) The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--

- 1) Names and addresses;
- 2) Medical services provided;
- 3) Social and economic conditions or circumstances;
- 4) Contractor evaluation of personal information;
- 5) Medical data, including diagnosis and past history of disease or disability

- 6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
  - 7) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
  - 8) Any information received in connection with the identification of legally liable third party resources; and.
  - 9) Social Security Numbers.
- d) The Contractor must have criteria approved by TENNCARE specifying:
- 1) the conditions for release and use of information about applicants and beneficiaries;
  - 2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of TENNCARE;
  - 3) The Contractor shall not publish names of applicants or beneficiaries;
  - 4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
  - 5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TENNCARE, the family or individual immediately after supplying the information.
  - 6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
    - i) The Contractor shall notify TENNCARE of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
  - 7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TENNCARE at least ten (10) days prior to the required production date so TENNCARE may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
  - 8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TENNCARE.
- E.19. Employees Excluded from Medicare, Medicaid or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act.
- E.20. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TENNCARE as provided in Section D.6, if it is determined that gratuities of any kind were offered

to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF TENNCARE:**

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**STUART C. MCWHORTER, COMMISSIONER**

**DATE**



## PRO FORMA CONTRACT ATTACHMENT A

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>	
<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**

**PRO FORMA ATTACHMENT B****LIQUIDATED DAMAGES**

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at HCFA's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from HCFA and may continue until such time as the HCFA Deputy Commissioner, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount HCFA is to pay to Contractor in a given payment, HCFA shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by HCFA, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the HCFA Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar days of receipt of the notice from HCFA containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

	<b><u>PROGRAM ISSUES</u></b>	<b><u>DAMAGE</u></b>
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section E. 2. and E.18	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party.  (See D. 20 and E. 14 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States.  (See E. 10 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach.  (See E.15 and Attachment C, Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
5.	Failure by the Contractor to comply with any approved disaster recovery plan.  (See Section A.11)	The damage that may be assessed, in the State's discretion, shall not exceed ten thousand dollars (\$10,000) per calendar day Contractor is non-compliant with its approved disaster recovery plan
6.	Failure by the Contractor to comply with a Control Memorandum and Control Directive (CM/CD) or Corrective Action Plan (CAP).  (See Section E. 9 and Section A.9)	The damage that may be assessed shall not exceed two thousand dollars (\$2,000.00) per calendar day for each separate failure to comply with a CM/CD or CAP until compliance is met.  If the Contractor fails to comply with the CM/CD or CAP for more than thirty (30) calendar days from the date of issuance of the CM/CD or CAP, TennCare may

		assess an additional two thousand dollars (\$2,000) per calendar day until the Contractor complies with the CM/CD or CAP.
7.	Failure by the Contractor to timely provide a satisfactory audit plan and obtain TennCare approval for the same.  (See Sections A.3.a-c)	The damage that may be assessed shall be ten thousand dollars (\$10,000.00) for each calendar day on and after the Contractor fails to timely provide a satisfactory audit plan and obtain TennCare approval for the same.
8.	Failure by the Contractor to comply with any requirement found in Section A.7.a Workforce Requirements provision of this Contract.  (See Section A.7)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per calendar day, per occurrence.
9.	Failure by the Contractor to comply with any requirement found in Section A.7.b Key Personnel of this Contract.  (See Section A.7)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per day, per occurrence.  If the Contractor's deficiency persists for more than thirty (30) days, the damage that may be assessed shall be two thousand (\$2,000.00) per calendar day, per occurrence, beginning on the thirty-first day of the deficiency.
10.	Failure to comply with any problem notification or corrective action plan requirement as established in Section A.8.  (See Section A.8)	TennCare may assess damages of up to \$25,000.00 per calendar day per occurrence.
11.	Failure to timely deliver any report required by the Contract.  (See Section A.4)	TennCare may assess damages of \$1,000 for each day on and after the Contractor fails to deliver each report by the deadline specified.

**PRO FORMA ATTACHMENT C**

## **HIPAA Business Associate Agreement**

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"), located at 310 Great Circle Road, Nashville, TN 37243 and \_\_\_\_\_

\_\_\_\_\_, ("Business Associate"), located at \_\_\_\_\_, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

### **BACKGROUND**

The Parties acknowledge that they are subject to the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and as amended by the final rule modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (HITECH). If Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and hereinafter referred to as "Service Agreements."

### **LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:**


In the course of performing services under a Service Agreement, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security rules and regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI that Business Associate may receive (if any) from or on behalf of Covered Entity, and, therefore, execute this Agreement.

### **1. DEFINITIONS**

All capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 C.F.R. Parts 160 through 164 or other applicable law or regulation. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as

amended.

1.1 “Commercial Use” means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

1.2 “Confidential Information” shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Business Associate under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program (“TennCare enrollees”), or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained through the Business Associate’s performance under this Agreement, shall also be treated as “Confidential Information” to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.

1.3 “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

1.4 “Marketing” shall have the meaning under 45 C.F.R. § 164.501 and the act or process of promoting, selling, leasing or licensing any TennCare information or data for profit without the express written permission of TennCare.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)**

2.1 Compliance with the Privacy Rule. Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as required by law. In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.

2.2 HITECH Act Compliance. The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and Breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with any applicable provisions of HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

2.3 Business Management. Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may provide data aggregation services relating to the Health Care Operations of TennCare, or as required by law. Business Associate is expressly prohibited from using or disclosing PHI other than as permitted by this Agreement, any associated Service Agreements, or as otherwise permitted or required by law, and is prohibited from uses or disclosures of PHI that would not be permitted if done by the Covered Entity.

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, and procedures, records of training and sanctions of members of its Workforce.

2.5 Business Associate Contracts. Business Associate shall require any agent, including a Subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential TennCare information, to agree, by written agreement with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information except for the provision at section 4.6, which shall only apply to the Business Associate notwithstanding the requirements in this section 2.5.

2.6 Mitigation of Harmful Effect of Violations. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.7 Reporting of Violations in Use and Disclosure of PHI. Business Associate shall require its employees, agents, and Subcontractors to promptly report to Business Associate immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement and to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. The Business Associate shall report such violation to Covered Entity immediately upon becoming aware of, and in no case later than 48 hours after discovery.

2.8 Breach of Unsecured Protected Health Information. As required by the Breach Notification Rule, Business Associate shall, and shall require its Subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

2.8.1 Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI immediately upon becoming aware of the Breach, and in no case later than 48 hours after discovery.

2.8.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.

2.8.3 Covered Entity shall make the final determination whether the Breach requires notification to affected individuals and whether the notification shall be made by Covered Entity or Business Associate.

2.9 Access of Individual to PHI and other Requests to Business Associate. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity in order to meet its requirements under 45 C.F.R. § 164.524. If Business Associate receives a request from an Individual for a copy of the Individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the Individual in a timely manner. If Business Associate receives a request for PHI not in its possession and in the possession of the Covered Entity, or receives a request to exercise

other Individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity. Business Associate shall then assist Covered Entity as necessary in responding to the request in a timely manner. If a Business Associate provides copies of PHI to the Individual, it may charge a reasonable fee for the copies as the regulations shall permit.

2.10 Requests to Covered Entity for Access to PHI. The Covered Entity shall forward to the Business Associate in a timely manner any Individual's request for access to or a copy (in any form they choose, provided the PHI is readily producible in that format) of their PHI that shall require Business Associate's participation, after which the Business Associate shall provide access to or deliver such information as follows:

- (a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- (b) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have fifteen (15) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (30) day requirement of 45 C.F.R. § 164.524.
- (c) If the Party designated above as responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.
- (d) Business Associate is permitted to send an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided the Business Associate has advised the Individual of the risk and the Individual still prefers to receive the message by unencrypted email.

2.11 Individuals' Request to Amend PHI. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, regarding an Individual's request to amend PHI. The Business Associate shall make the amendment promptly in the time and manner designated by Covered Entity, but shall have thirty (30) days' notice from Covered Entity to complete the amendment to the Individual's PHI and to notify the Covered Entity upon completion.

2.12 Recording of Designated Disclosures of PHI. Business Associate shall document any and all disclosures of PHI by Business Associate or its agents, including information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

2.13 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an Individual, or Individual's designee, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The Covered Entity shall forward the Individual's request requiring the participation of the Business Associate to the Business Associate in a timely manner, after which the Business Associate shall provide such information as follows:

- (a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the



- Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
  - (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
  - (d) The accounting of disclosures shall include at least the following information:
    - (1) date of the disclosure;
    - (2) name of the third party to whom the PHI was disclosed,
    - (3) if known, the address of the third party;
    - (4) brief description of the disclosed information; and
    - (5) brief explanation of the purpose and basis for such disclosure.
  - (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

2.14 Minimum Necessary. Business Associate shall use reasonable efforts to limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.14.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.14.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.14.3 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity.

2.15 Privacy Compliance Review upon Request. Business Associate agrees to make its internal practices, books and records, including policies, procedures, and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.16 Cooperation in Privacy Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Privacy Rule.

### **3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)**

3.1 Compliance with Security Rule. Business Associate shall fully comply with the requirements under the Security Rule applicable to "Business Associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Security Safeguards and Policies. Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating the same restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

3.4 Reporting of Security Incidents. The Business Associate shall track all Security Incidents as defined and as required by HIPAA and shall periodically report such Security Incidents in summary fashion as may be requested by the Covered Entity. The Covered Entity shall not consider as Security Incidents, for the purpose of reporting, external activities (port enumeration, etc.) typically associated with the "foot printing" of a computing environment as long as such activities have only identified but not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers. The Business Associate shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for Business Associate's operations. However, the Business Associate shall expediently notify the Covered Entity's Privacy Officer of any related Security Incident, immediately upon becoming aware of any unauthorized acquisition including but not limited to use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware.

3.4.1 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

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Business Associate shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.

3.5 Contact for Security Incident Notice. Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

TennCare Privacy Officer  
 310 Great Circle Rd.  
 Nashville Tennessee 37243  
 Phone: (615) 507-6855  
 Facsimile: (615) 734-5289  
 Email: Privacy.TennCare@tn.gov

3.6 Security Compliance Review upon Request. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the security of Electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's, Business Associate's compliance with the Security Rule.

3.7 Cooperation in Security Compliance. Business Associate shall fully cooperate in good faith to assist Covered Entity in complying with the requirements of the Security Rule.

3.8 Refraining from intimidation or retaliation. A Covered Entity or Business Associate may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any Individual or other person for-- (a) Filing of a complaint under 45 C.F.R. § 160.306; (b) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or (c) opposing any act or practice made unlawful, provided the Individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of HIPAA.

#### **4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

4.1 Use and Disclosure of PHI for Operations on Behalf of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform Treatment, Payment or Health Care Operations for, or on behalf of, Covered Entity as specified in Service Agreements, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity.

4.2 Other Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI within its Workforce as required for Business Associate's proper management and administration, not to include Marketing or Commercial Use, or to carry out the legal responsibilities of the Business Associate.

4.3 Third Party Disclosure Confidentiality. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or, if permitted by law, this Agreement, and the Service Agreement, provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as required by law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is Breached immediately upon becoming aware.

4.4 Other Uses Strictly Limited. Nothing in this Agreement shall permit the Business Associate to share PHI with Business Associate's affiliates or contractors except for the purposes of the Service

Agreement(s) between the Covered Entity and Business Associate(s) identified in the “LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT” on page one (1) of this Agreement.

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential TennCare information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary. Activities which are prohibited include, but not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

4.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

4.7 Prohibition of Other Uses and Disclosures. Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.8 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided that Business Associate complies with the obligations below. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.9 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures it makes of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions, including business planning and development such as conducting cost-management and planning-related analysis related to managing and operating Business Associates functions, formulary development and administration, development and improvement of methods of payment or coverage policies, customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers, to the extent such activities are related to covered functions, provided that PHI is not disclosed and disclosure is not prohibited pursuant to any other provisions in this Agreement related to Marketing or Commercial use.

4.10 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.

4.11 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

## **5. OBLIGATIONS OF COVERED ENTITY**

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of Privacy Practices produced by Covered Entity in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

5.2 Notice of Changes in Individual's Access or PHI. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Notice of Restriction in Individual's Access or PHI. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that this Section (Section 5) is reciprocal to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

## 6. TERM AND TERMINATION

6.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and shall terminate when all PHI which has been provided, regardless of form, by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if the Parties agree that it is unfeasible to return or destroy PHI, subsection 6.3.5 below shall apply.

6.2 Termination for Cause. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to terminate this Agreement and Service Agreement in the event Business Associate fails to comply with, or violates a material provision of this Agreement and any provision of the Privacy and Security Rules.

6.2.1 Upon Covered Entity's knowledge of a Breach by Business Associate, Covered Entity shall either:

- (a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Covered Entity; or
- (b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

6.3 Effect of Termination. Upon termination of this Agreement for any reason, except as provided in subsections 6.3.2 and 6.3.5 below, Business Associate shall at its own expense either return and/or destroy all PHI and other confidential information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Business Associate.

6.3.1 The Business Associate shall consult with the Covered Entity as necessary to assure an appropriate means of return and/or destruction and shall notify the Covered Entity in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the Covered Entity.

6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by the Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its Subcontractors and agents shall

retain copies of TennCare confidential information, including enrollee PHI, except as provided herein in subsection 6.3.5.

- 6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other TennCare confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.
- 6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.
- 6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

## 7. MISCELLANEOUS

- 7.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and/or Security Rule means the section as in effect or as amended.
- 7.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to, changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 7.3 Survival. The respective rights and obligations of Business Associate under Confidentiality and Section 6.3 of this Agreement shall survive the termination or expiration of this Agreement.
- 7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 7.5 Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.

**7.6 Notices and Communications.** All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to “Respective Party” is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relative to Sections 2.8 and 3.4 of this Agreement must also be reported to the Privacy Officer pursuant to Section 3.5.

**COVERED ENTITY:**

Gabe Roberts, MD, Director  
Division of TennCare  
310 Great Circle Rd.  
Nashville, TN 37243  
Fax: (615) 253-5607

**BUSINESS ASSOCIATE:**

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All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

**7.7 Transmission of PHI or Other Confidential Information.** Regardless of the transmittal methods permitted above, Covered Entity and Business Associate agree that all deliverables set forth in this Agreement that are required to be in the form of data transfers shall be transmitted between Covered Entity and Business Associate via the data transfer method specified in advance by Covered Entity. This may include, but shall not be limited to, transfer through Covered Entity’s SFTP system. Failure by the Business Associate to transmit such deliverables in the manner specified by Covered Entity may, at the option of the Covered Entity, result in liquidated damages if and as set forth in one (1) or more of the Service Agreements between Covered Entity and Business Associate listed above. All such deliverables shall be considered effectively submitted upon receipt or recipient confirmation as may be required.

**7.8 Strict Compliance.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

**7.9 Severability.** With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law. Jurisdiction shall be Davidson County, Nashville, Tennessee, for purposes of any litigation resulting from disagreements of the parties for purpose of this Agreement and the Service Agreement(s).

7.11 Compensation. There shall be no remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and Services Agreement(s) referenced herein.

7.12 Validity of Execution. Unless otherwise agreed, the parties may conduct the execution of this Business Associate Agreement transaction by electronic means. The parties may agree that an electronic record of the Agreement containing an Electronic Signature is valid as an executed Agreement.

**IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the last date set out below:**

**DIVISION OF TENNCARE**

By: \_\_\_\_\_

*Gabe Roberts, MD, Director*

Date: \_\_\_\_\_

Division of TennCare  
310 Great Circle Road  
Nashville, TN 37243  
Fax: (615) 253-5607

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**PRO FORMA CONTRACT ATTACHMENT D**  
**(Fill out only by selected Contractor)**

SAMPLE LETTER OF DIVERSITY COMMITMENT

**(Company Letterhead/Logo)**

**(Address)**

**(Date)**

**(Salutation),**

**(Company Name)** is committed to achieving or surpassing a goal of **(numeral)** percent spend with certified diversity business enterprise firms on State of Tennessee contract # **(Edison document #)**. Diversity businesses are defined as those that are owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of **(percentage)** participation on the **(Contract)** by using the following diversity businesses:

- (i) Name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran, or disability) of anticipated diversity subcontractors and suppliers:

\_\_\_\_\_

- (ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):

\_\_\_\_\_ %.

- (iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

\_\_\_\_\_

\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses.
2. Reporting monthly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # **(Edison number)**.

**(Company Name)** is committed to working with the Go-DBE office to accomplish this goal.

Regards,

**(Company authority – signature and title)**